Supreme Court, U.S.
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OFFICE

NO. 92-307

IN THE SUPREME COURT
OF THE UNITED STATES OF AMERICA

OCTOBER TERM, 1992

JOHN D. ELLIOTT and C. LEONARD DAVIS,

Petitioners,

v.

THE CITY OF ATHENS, GEORGIA,
and the MAYOR AND COUNCIL
OF THE CITY OF ATHENS, GEORGIA,
DWAIN P. CHAMBERS, MIRIAM MOORE, HARRY SIMS,
CARDEE KILPATRICK, KATHY HOARD, LINNY BAILEY,
MAC COILE, CAROLYN REYNOLDS, GWEN O'LOONEY
and CALVIN BRIDGES,

Respondents.

**ON PETITION FOR
WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

PETITIONERS' SUPPLEMENTAL BRIEF

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In support of their Petition for Writ of Certiorari, Petitioners call to the Court's attention the recently decided case of Parish of Jefferson v. Allied Health Care, Inc., --- F.Supp. ---, 1992 U.S. Dist. Lexis 9124 (E.D. La. June 10, 1992)[1]. Although this case was decided by a district court and not a court of appeals, the facts and issues involved in the case are so similar to the case at bar that the decisions cannot be reconciled and a division among the circuits is likely to result.

In Parish of Jefferson, the district court held that a local zoning ordinance which restricts occupancy of a home to not more than four unrelated persons discriminates against handicapped persons and is not exempt, under 42 U.S.C. § 3607(b)(1), from the provisions of the Fair Housing Act which protect the handicapped. Id.

Allied Health Care, Inc. purchased two duplex residences in Jefferson Parish, Louisiana for the purpose of operating community homes for mentally handicapped

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[1] Three separate cases, Nos. 91-1199, 91-1200 and 91-3959 were consolidated by the district court as noted at fn. 1.

individuals. The duplexes are located in an area of the Parish zoned R-2, a zoning classification which permits a maximum of four unrelated persons to reside in a dwelling unit. As duplexes, eight persons would be allowed to reside on each property. Allied modified the duplexes by opening internal passageways between the units, converting each property into a single dwelling. Allied intended to operate the group homes with six residents at each site.

Jefferson Parish filed suit against Allied, seeking to enjoin the operation of the group homes, contending that the operation of a community residence for more than four persons would violate the zoning ordinance as the modified homes were now single-family residential dwellings. The United States filed suit against Jefferson Parish, seeking various forms of relief including an order declaring the Parish's action in violation of the Fair Housing Act.

Allied and the United States contended that the Fair Housing Act required the Parish to grant a variance, allowing the operation of the group homes, with a total of six occupants in each, as a reasonable accommodation for the handicapped, pursuant to 42 U.S.C. §§ 3604(f)(3)(A)

and (B). Jefferson Parish, like the City of Athens in the case at bar, argued that its zoning ordinance does not discriminate on the basis of handicap, or deny the handicapped equal opportunity to housing, because its zoning ordinance is facially neutral and applies equally to all unrelated persons, regardless of handicap. The court found this argument unpersuasive and, relying upon the legislative history of the 1988 amendments to the Act, held that reasonable accommodation is required by a local government when the application of a zoning ordinance has "the effect of limiting the ability of handicapped individuals to live in residences of their choice in the community." Parish of Jefferson v. Allied Health Care, Inc., 1992 U.S. Dist. Lexis 9124 at 18-20. The court held that the Fair Housing Act requires Jefferson Parish to make reasonable accommodations for the needs of Allied's clients and that the requested variance was a reasonable accommodation. Id.

Next, the court turned to the Parish's argument that 42 U.S.C. § 3607 (b)(1) exempts the zoning ordinance from

the application of the anti-discrimination provisions of the Act. Here the court held:

> This exception cannot be considered in a vacuum. Its language was not intended to negate any obligation of reasonable accommodations necessary to allow mentally handicapped persons to reside in a group home setting.

Id. at 19. Applying the rationale advocated by Judge Kravitch in the instant case, the court held that Allied was entitled to a reasonable accommodation, that the accommodation requested was reasonable, and that the exemption contained in 42 U.S.C. § 3607 was not applicable. Accordingly, the court found the zoning ordinance to be in violation of the Fair Housing Act "in that it has the effect of discriminating against handicapped persons by unnecessarily restricting their ability to live in residences of their choosing in the community" and enjoined the Parish from interfering in the operation of the group homes. Id. at 21. As argued by Petitioners' throughout this case, the court's decision was a proper interpretation and application of the 1988 amendments to the Fair Housing Act.

CONCLUSION

Clearly, the decision in Parish of Jefferson v. Allied Health Care, Inc., --- F.Supp. ---, 1992 U.S. Dist. Lexis 9124 (E.D. La. June 10, 1992) cannot be reconciled with the decision of the 11th Circuit Court of Appeals in the instant case. Should Parish of Jefferson be affirmed on appeal, or be followed by any court of appeals, there will be a conflict among the circuits as to the proper interpretation and application of essential provisions of the Fair Housing Act. Accordingly, Petitioners respectfully request that the Court grant their Petition for Writ of Certiorari to review the decision of the 11th Circuit.

This 2nd day of October, 1992.

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